STATE OF MICHIGAN

COURT OF APPEALS

MEL FARR,

Plaintiff-Appellant,

v

FORD MOTOR CREDIT CORPORATION,

Defendant-Appellee.

UNPUBLISHED
July 14, 2005

No. 260835
Oakland Circuit Court
LC No. 03-054477-CH

Before: Neff, P.J., Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant in this action to quiet title and for slander of title. We affirm.

In July 1993, the parties entered into an agreement granting defendant a mortgage on plaintiff's property located on Greenfield Road in Oak Park, Michigan, ("Greenfield Road Mortgage") to secure plaintiff's debt of $545,000 to defendant. Plaintiff alleged that this debt was paid off in 1998, but the mortgage had previously become the subject of cross-collateralization of other loans between the parties. Plaintiff also alleged that the cross-collateral lien on the property was discharged pursuant to a Comprehensive Settlement Agreement (CSA) in March 2002, ending the parties' business relationship. Plaintiff later attempted to obtain new financing for business-related purposes, offering the Greenfield Road property as security for the new obligation, at which time a title search revealed that defendant's lien had not been removed from the property. Plaintiff requested defendant to remove the cloud remaining on plaintiff's title to the Greenfield Road property, but defendant refused. Plaintiff filed his complaint, commencing this action, on November 26, 2003.

Plaintiff initially a filed motion for summary disposition pursuant to MCR 2.116(C)(9), claiming that defendant's affirmative defense, that all claims under the CSA were subject to arbitration, was inapplicable to his action for slander of title. The trial court denied this motion. Plaintiff then filed a second motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that: (1) the CSA was a novation of all prior agreements between the parties, which were merged into the CSA, (2) the release provision of the CSA discharged all plaintiff's obligations to defendant, and (3) defendant's refusal to remove the Greenfield Road Mortgage after notice amounted to slander of title as a matter of law.

Defendant countered that, although plaintiff paid off the original indebtedness secured by the Greenfield Road Mortgage in 1998, plaintiff entered into a cross-collateralization agreement on January 20, 1997, which made all of the collateral that defendant held any interest in as of that date security for each and every loan from defendant to any of plaintiff's companies. The Greenfield Road Mortgage was among the collateral that became subject to the cross-collateralization agreement, which was restated, renewed, and re-executed seven times between January 20, 1997, and April 10, 2000, as plaintiff and his companies acquired new indebtedness to defendant. Defendant maintained that the Greenfield Road Mortgage remains valid security for outstanding loans to plaintiff's several companies and that there is no provision in the CSA that releases the mortgage or discharges the cross-collateralization agreement. On this basis, defendant also moved for summary disposition pursuant to MCR 2.116(C)(10).

The trial court heard oral arguments on the parties' motions for summary disposition and reviewed the CSA and the several revisions of the cross-collateralization agreement in camera because those documents were subject to a confidentiality agreement and protective order. The trial court determined that: (1) the CSA contained no language indicating that it was a novation merging all prior agreements, rather it contained provisions resolving possible conflicts with prior agreements; (2) the CSA only released defendant, but not plaintiff; and (3) plaintiff's slander of title action must fail because defendant's lien on the Greenfield Road property is valid. The trial court granted summary disposition in favor of defendant and dismissed plaintiff's claims for quiet title and slander of title.

On appeal, plaintiff first argues that defendant failed to specifically deny the allegation in plaintiff's complaint that plaintiff satisfied his debt in full to defendant. Plaintiff, however, never raised this issue below and the trial court never addressed it; therefore, plaintiff failed to preserve this issue for this Court's review. *Shuler v Michigan Physicians Mut Liability Co*, 260 Mich App 492, 524; 679 NW2d 106 (2004).

Next, plaintiff argues that the trial court erred in determining that the CSA did not extinguish the Greenfield Road Mortgage. We disagree.

This Court applies a de novo standard when reviewing a motion for summary disposition made under MCR 2.116(C)(10), which tests the factual support for a claim. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In evaluating a motion under MCR 2.116(C)(10), "a court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleading, depositions, admissions, and other evidence submitted by the parties." *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id*.

Plaintiff's arguments regarding the trial court's interpretation of the CSA present this Court with a question regarding the proper interpretation of a contract. Under ordinary contract principles, if the language of a contract is clear and unambiguous, its construction is a question of law for the court. *Michigan Nat. Bank v Laskowski*, 228 Mich App 710, 714; 580 NW2d 8 (1998) (citation omitted). Contract language should be given its ordinary and plain meaning. *Id*. When two parties have entered into a written contract and have expressed their intention that the writing constitute the complete and accurate integration of that contract, evidence, whether parol or otherwise, of antecedent understandings and negotiations will not be admitted for the purpose

of varying or contradicting the writing. *Id*. at 714-715. Where one writing references another instrument for additional contract terms, however, the two writings should be read together. *Forge v Smith*, 458 Mich 198, 207; 580 NW2d 876 (1998).

On July 15, 1993, Mel Farr Ford, Inc., entered into a loan security agreement that gave defendant the interest described in a document entitled "Mortgage and Assignment of Leases and Rents and Security Agreement," which is also dated July 15, 1993, as security for increasing the amount of a previous loan from $300,000 to $545,000. Plaintiff signed the loan security agreement in his capacity as president of Mel Farr Ford, Inc., but he signed the mortgage agreement in his individual capacity. On January 20, 1997, the parties entered into an agreement, entitled "Second Amendment to Cross Default Agreement," that cross-collateralized all of the collateral that defendant had an interest in as of that date to secure all of the loans from defendant to each of plaintiff's seven corporations, including Mel Farr Ford, Inc. Plaintiff, however, does not allege that he paid off the $545,000 debt until 1998. The Greenfield Mortgage was, therefore, collateral securing a loan to one of plaintiff's corporations in which defendant had an interest as of January 20, 1997, and, thus, subject to the cross-collateralization agreement.

The trial court did not err in determining that the CSA was not a novation. Although the CSA contains an integration clause, several other provisions of the CSA reference other documents, such as the "Master Agreement," which apparently contains definitions of the terms used in the CSA, and the "Total Loan Documents," which apparently include the cross-collateral agreements.[1] Additionally, the CSA contemplates possible conflict between its terms and those of any of the Total Loan Documents, stating: "To the extent of any conflict between the terms and conditions of this Agreement and the terms and conditions of any Total Loan Document which cannot be reconciled, this Agreement controls absolutely."

Section 3(c) of the CSA states: "Ford Credit has a valid and first perfected security interest or a valid and first mortgage lien on the Collateral pursuant to the relevant Total Loan Documents." Section 3 goes on to state that defendant has the right to "foreclose any mortgages which are Total Loan Documents[,] either judicially, by advertisement, or by any other method provided by law . . . ." Presuming, as the trial court did, that the cross-collateral agreements are included in the Total Loan Documents, the CSA expressly recognizes that defendant maintains the Greenfield Road Mortgage. Defendant's argument that the trial court improperly relied on parol evidence, i.e., the cross-collateralization agreements, fails because, as Total Loan Documents, the cross-collateralization agreements are incorporated into the CSA by reference and, therefore, are not parol evidence.

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[1] The lower court opinion, in a footnote, states: "The CSA does not define 'Total Loan Document'. That term may be defined in the Master Agreement (see paragraph 1 of the CSA), however the Court was not provided with a copy of that agreement. Based on the arguments of counsel, the Court has assumed that the cross-collateral agreements would fall under the definition of a 'Total Loan Document.'" *Mel Farr v Ford Motor Credit Corporation*, unpublished opinion and order of the Oakland Circuit Court, p 3 n 1, issued January 25, 2005 (Docket No. 03-054477-CH).

Defendant's argument that the trial court improperly relied on the hearsay affidavit of Mark Moerschell also fails. Generally, the decision whether to admit evidence is reviewed for an abuse of discretion, but if the decision involved a preliminary issue of law, such as whether a statute or rule of evidence precluded admissibility, the issue is reviewed de novo. *People v Washington*, 468 Mich 667, 670-671; 664 NW2d 203 (2003). The trial court stated in it's opinion that it "thoroughly reviewed the summary disposition motions, briefs, and exhibits, but did not consider the affidavits submitted insofar as they addressed the interpretation of the CSA, because the CSA is unambiguous." To the extent that the trial court may have relied on Moerschell's affidavit for facts unrelated to the interpretation of the CSA, including evidence of the fact that plaintiff still had debts outstanding to defendant, this affidavit was not hearsay evidence because it related solely to information contained in defendant's business records. Moerschell averred that he is the Detroit Branch manager of Ford Credit, he is familiar with plaintiff's business records, and those records are made and kept in the course of defendant's regularly conducted business. His affidavit clearly falls within the business-record exception to the hearsay rule contained in MRE 803(6), and the trial court did not err in considering it.

Plaintiff also argues that the release provision in section 12 of the CSA releases both parties from all future obligations, not just defendant. The unambiguous language of section 12, however, makes clear that it is a release granted by plaintiff to defendant. Section 12 states: "The Obligors and Funding,[2] . . . hereby expressly waive, release and discharge . . . all complaints, claims, charges . . . with respect to any event, matter, claim . . . against Ford Credit." Furthermore, section 12 expressly refers to defendant and defendant's corporations as the "Releasors" and to defendant and its employees as the "Releasees." Thus, the Greenfield Road Mortgage was cross-collateralized, was not displaced or released by the CSA, and remains outstanding. Defendants, therefore, retain a valid mortgage on the Greenfield Road property, and the trial court properly granted summary disposition in favor of defendant.

In light of this conclusion, it is unnecessary to fully address plaintiff argument that he was entitled to a finding of slander of title as a matter of law. Plaintiff's claim of slander of title fails because defendant retains a valid lien on the property.

Affirmed.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Michael J. Talbot

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[2] The first paragraph indicates that "each of the Borrowers and the Other Guarantors [is] an 'Obligor' and, collectively, the 'Obligors'[,] and Triple M Funding Corporation I [is referred to as] 'Funding.'"